

STATE OF NEW YORK: COUNTY OF CHAUTAUQUA
SUPREME COURT

MISTY FREEMAN

Plaintiff,

v. Index # - 1.17-CV-0683-WKS

CITY OF JAMESTOWN OF POLICE OFFICER ELLIS

CITY OF JAMESTOWN OF SERGEANT BENDER

CITY OF JAMESTOWN OF LT. JACKSON

CITY OF JAMESTOWN OF JOHN DOE(S)

Defendants.

Examination Before Trial of

SERGEANT ROBERT BENDER

Held on **March 11th, 2019** at the Office of
the Corporation Counsel, 300 East Third Street
Jamestown, New York 14701, commencing at 10:35 a.m.
before Kathleen A. Roberts, Shorthand Reporter and
Notary Public in and for the State of New York.

ADVANTAGE COURT REPORTING
(716) 962.4007

1 **A P P E A R A N C E S**

2

3 **FOR THE PLAINTIFF:**

4 **LAW OFFICE OF MATTHEW ALBERT**

5 By: MR. MATTHEW ALBERT, ESQUIRE

6 PO Box

7 254 Richmond Avenue

8 Buffalo, New York 14222

9

10 **FOR THE DEFENDANTS:**

11 **CORPORATION COUNSEL**

12 By: MS. MARILYN FIORE-LEHMAN, ESQUIRE

13 300 East Third Street

14 Jamestown, New York 14701

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1 **INDEX TO WITNESSES**

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3 SERGEANT ROBERT BENDER

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18 **DOCUMENT PRODUCTION REQUESTS**

19 BY MR. ALBERT:

- 20 1. 56/06 Formal request for the internal affairs
21 file relating to officer complaint.

22

23

1 S-T-I-P-U-L-A-T-I-O-N-S

2

3 It is hereby stipulated and agreed by and between
4 the parties hereto, through their respective
5 counsel, that the sealing, certification and filing
6 shall be waived;

7

8 It is further stipulated and agreed that all
9 objections except as to the form of the question
10 shall be reserved until the time of trial;

11

12 It is further stipulated and agreed that the
13 signing of the transcript of testimony shall
14 be waived;

15

16 It is further stipulated and agreed that the
17 examining party will furnish the examined party
18 with a copy of the transcript of testimony free
19 of charge, and the examining party will only be
20 responsible for that testimony.

21

22 * * *

23

SERGEANT ROBERT BENDER

1 SERGEANT ROBERT BENDER,

2 Having been duly sworn by the Notary, stating
3 his address to the Jamestown Police Department, 201
4 East Second Street, Jamestown, New York 14701, was
5 examined and testified as follows:

6 EXAMINATION BY

7 MR. ALBERT:

8 Q. Good morning, sir.

9 A. Morning.

10 Q. We'll start with some basic background
11 questions. How long have you been employed with the
12 Jamestown Police Department?

13 A. April 2004.

14 Q. And if you could describe your different
15 ranks and duties throughout your career, please?

16 A. I was hired as a patrolman in 2004. And
17 in 2013 I was promoted to sergeant.

18 Q. And then -- It's self-explanatory, but as
19 a sergeant what are some of your duties?

20 A. Supervise patrolmen, answer questions,
21 review reports, that kind of thing.

22 Q. Okay. And so do you guys have a
23 lieutenant?

SERGEANT ROBERT BENDER

1 A. We do.

2 Q. You rank -- you rank above the lieutenant;
3 correct?

4 A. No.

5 Q. Lieutenants rank above sergeants?

6 A. Right.

7 Q. Okay. So tell me if I'm correct,
8 lieutenants supervise sergeants?

9 A. Yes.

10 Q. And sergeants supervise patrolmen?

11 A. Yes.

12 Q. Do you answer calls yourself?

13 A. At times, yeah. We are assigned to the
14 road occasionally. As sergeant we're technically --
15 if everyone shows up to work every day we would only
16 be on the road one day a week, inside three of the
17 four days.

18 Q. And when you're inside what do you do
19 specifically, when you're inside, I guess, in terms
20 of supervision?

21 A. Answer phones, monitor dispatch, review
22 reports from patrolmen when they come in and write
23 reports. They ask me questions, so I help the

SERGEANT ROBERT BENDER

1 patrolmen out.

2 Q. Understood. Does the City of Jamestown
3 Police Department have an internal affairs unit?

4 A. Yes.

5 Q. Did you have one of those units back in
6 September of 2015?

7 A. Yes.

8 Q. Who mans that unit?

9 A. The person in charge, it would be Captain
10 Samuelson.

11 Q. Can you spell that?

12 A. Captain Samuelson, S-A-M-U-E-L-S-O-N.

13 Q. Oh, okay. Are any other officers assigned
14 to that unit?

15 A. No.

16 Q. Okay. And just -- you said no; correct?

17 A. No, sorry. I'll speak up.

18 Q. Okay. Fair enough. So a one-man unit; is
19 that accurate?

20 A. Yes, he's in charge of it.

21 Q. Okay. How many of the officers are
22 employed by the City of Jamestown Police Department?

23 A. Currently we are down quite a few. Let me

SERGEANT ROBERT BENDER

1 just --

2 Q. You can ballpark it if you want.

3 A. I'm going to say about fifty-eight.

4 Q. Fifty-eight.

5 A. That's the chief and everyone.

6 Q. Understood. And what was the number in
7 September of 2015, ballpark it if you would?

8 A. Close to sixty, I would say.

9 Q. Okay. And specific to internal affairs
10 complaints, is there any sort of policy as to how
11 these are filed and processed?

12 A. Absolutely.

13 Q. What is that policy?

14 A. As far as someone coming and filing a
15 complaint, a supervisor would be notified, or myself
16 or any other supervisor working that shift. They're
17 notified, they come in, they speak to the
18 complainant and they take the report.

19 Q. Is there a specific form that is filled
20 out?

21 A. It's just documenting on a normal report,
22 like what we would call a first sheet.

23 Q. Sworn statement?

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SERGEANT ROBERT BENDER

1 A. That's part of it, but we actually take a
2 report as well.

3 Q. So there's a report taken and also then a
4 sworn statement?

5 A. Yes.

6 Q. Okay. Then what does the supervisor do
7 with both that report and the sworn statement?

8 A. Depends on the scenario. Let's say a
9 normal officer complaint, we would take it, have
10 them sign the deposition, take all of the paperwork,
11 we complete it and put it into an envelope and hand
12 it to the captain, or put it in his mail box.

13 Q. The captain?

14 A. Right, because it's patrol we would give
15 it to Captain Isaacson, who would then review it,
16 and then he would assign it as an internal
17 investigation.

18 MR. ALBERT: I'll make a formal
19 request. I don't believe I have the report that is
20 being referenced.

21 MS. FIORE-LEHMAN: You should have
22 it, I think I sent it to you.

23 MR. ALBERT: I may be mistaken.

SERGEANT ROBERT BENDER

1 There is a lot of paperwork in this case.

2 (Deposition Exhibit Number 11 - SERGEANT BENDER'S

3 REPORT

4 marked for Identification.)

5 BY MR. ALBERT

6 Q. I think we are at a place where you stated
7 that upon filing these documents you would provide
8 it to the captain; is that accurate?

9 A. Yes.

10 Q. Okay. Then the captain, what would the
11 captain do with it at that point, if you know?

12 A. I don't know technically. I mean I'm not
13 a captain.

14 Q. Sure. Is giving it to the captain how the
15 formal complaint is initiated?

16 A. Technically once it's given to me.

17 Q. That's how it's initiated?

18 A. Yeah.

19 Q. So is there a case number or something
20 associated with the internal affairs complaint?

21 A. Absolutely, one is created.

22 Q. Would that be the same as the incident
23 number, or would that be separate?

SERGEANT ROBERT BENDER

1 A. Yes, that is it.

2 Q. That would be?

3 A. Yes.

4 Q. You pass it off to the captain, and then
5 who actually reviews the officer's conduct to make a
6 finding?

7 A. Whoever he assigns to it. I think
8 technically he is as he's reviewing it, but he
9 assigns it to someone to follow up on.

10 Q. Are there different findings, a system or
11 something that incorporates all of the different
12 findings that the reviewer could find?

13 A. I'm not understanding that question.

14 Q. Yeah, okay. So --

15 A. Sorry.

16 Q. That's okay. An officer is accused of
17 misconduct of some sort?

18 A. Okay.

19 Q. It gets reviewed by a captain who assigns,
20 it. Who does he assign it to; a sergeant,
21 lieutenant, to review?

22 A. Lieutenant usually.

23 Q. The lieutenant then reviews the

SERGEANT ROBERT BENDER

1 individual's conduct?

2 A. Um-hum.

3 Q. Just say yes for the record.

4 A. Yes.

5 Q. Okay. Then what are the possible outcomes
6 in terms of what the lieutenant could find?

7 A. Oh, sure. I guess one would be founded
8 and the other unfounded.

9 Q. Are there any other potential --

10 A. I don't know what -- I don't do internal
11 investigations so I don't know what they would
12 categorize them as. I have only had one filed
13 against me in all of my fifteen years and it was
14 unfounded.

15 Q. So fair to say you're not entirely
16 familiar with the --

17 A. Exactly.

18 Q. -- the review process?

19 A. Exactly.

20 Q. And that's not your detail, internal
21 affairs?

22 A. No.

23 Q. Okay. Just very briefly, I don't know why

SERGEANT ROBERT BENDER

1 we always ask these questions. Your educational
2 background. What's your highest level of education?

3 A. I have an Associate's degree from
4 Jamestown Community College.

5 Q. In criminal justice?

6 A. In Applied Sciences.

7 Q. Got you. Now I'm going to direct your
8 attention to September 27th of 2015. But prior to
9 that date did you have interaction at all with my
10 client Misty Freeman?

11 A. No.

12 Q. Did you know of her existence prior to
13 that date?

14 A. No.

15 Q. If you could, in your own words, describe
16 your interactions with her on that date in terms of
17 how it was that you spoke, how it was that you
18 interacted with her, and the nature of the
19 interaction.

20 A. Okay. I was assigned to the command desk
21 working inside as a supervisor. She came into the
22 Jamestown Police Department to file a complaint and
23 I spoke to her about it.

SERGEANT ROBERT BENDER

1 Q. What was the nature of her complaint, if
2 you recall?

3 A. It was an officer complaint about Officer
4 Ellis.

5 Q. Do you recall what it was that she said
6 specifically about Officer Ellis, what he did or
7 didn't do?

8 A. Yes.

9 Q. What?

10 A. She had complained that he had kicked in
11 her door and with a peace officer that he was with
12 on the call, Mr. Desnerck, that was with him, kicked
13 the door in, and then they called her names and
14 called her a liar, and that she felt threatened by
15 that.

16 Q. Nicholas Desnerck was a peace officer?

17 A. No. That was Officer Ellis, he was the
18 peace officer.

19 Q. I see. And what is a peace officer
20 called?

21 A. Just like it sounds, we're there to just
22 keep the peace. It would be someone picking up
23 property or a custody exchange. They call us to

SERGEANT ROBERT BENDER

1 make sure that the parties don't fight.

2 Q. Understood. What is Officer Ellis's first
3 name?

4 A. Aaron.

5 Q. How long have you known Officer Ellis?

6 A. I think he was hired in -- I don't know,
7 2013, 2014, something like that.

8 Q. Are you friends with him?

9 A. Just from work, yeah.

10 Q. Sure.

11 A. Coworkers.

12 Q. Got you. Do you know whether there had
13 been any prior complaints lodged against Officer
14 Ellis of any sort?

15 A. No.

16 Q. Is that something that you looked into
17 that night at all?

18 A. Not that night. He was new. I think he
19 only had like six months on the job so I would
20 probably have known if he had.

21 Q. I hear you. So, was anyone with Misty
22 when she came in?

23 A. Pretty sure that she came in by herself.

SERGEANT ROBERT BENDER

1 Q. All right.

2 A. I know for a fact she was the only one in
3 the room talking to me, but I don't know if she had
4 anyone waiting for her in the lobby.

5 Q. Okay. So she came into the command
6 center?

7 A. Into the lobby.

8 Q. Did you take her into a separate room?

9 A. Interview room, yes.

10 Q. Then you stated what she said. You asked
11 her what happened; is that fair to say?

12 A. Yes.

13 Q. Okay. How long did the whole process
14 take, the whole interview?

15 A. Review the report?

16 Q. Absolutely.

17 A. Looks like she got there about 8:15. And
18 what time did her son come in, that will give me an
19 idea. She came in at about 8:05 p.m.

20 Q. Okay.

21 A. On the report it says 20:05 hours and her
22 son came in, and she had already left by that time,
23 21:45 hours, or 9:45 p.m.

SERGEANT ROBERT BENDER

1 Q. Okay.

2 A. Close to the ballpark of an hour, hour and
3 a half I would say.

4 Q. Sure. One second. Sorry. Did you do
5 anything at that point, did you look up Misty
6 Freeman to see if she had any warrants, an arrest
7 record?

8 A. Not that I recall.

9 Q. And what did you say to her as she was
10 telling you what had taken place?

11 A. As she was telling me what happened,
12 originally happened?

13 Q. Yeah. When you are in the interview room
14 with her. She stated what she said; correct? Let's
15 back up then. To the best of your recollection what
16 did she say when she came into the interview room,
17 to you?

18 A. She gave me the story of what happened.
19 Officer Ellis showed up with Nicholas Desnerck,
20 Officer Ellis broke the lock, kicked the door in,
21 and they were calling her names and calling her a
22 liar.

23 Q. Did you then have her memorialize that in

SERGEANT ROBERT BENDER

1 a statement; is that accurate?

2 A. Yes.

3 MS. FIORE-LEHMAN: We can use this
4 one.

5 Q. So in your deposition, Exhibit 11, is that
6 a fair and accurate reflection of the statement that
7 you took from her on September 27th, 2015?

8 A. Yes.

9 Q. In there does she state that they kicked
10 that door in? Does it say that anywhere in her
11 statement?

12 A. Can I review it?

13 Q. Sure.

14 A. I reviewed it the other day but let me
15 make sure.

16 Q. Does it say that they kicked the door in
17 in there?

18 A. It doesn't phrase it as they kicked in the
19 door.

20 Q. Obviously when people are recounting
21 events or what people said, mistakes sometimes
22 happen?

23 MS. FIORE-LEHMAN: I'm going to

SERGEANT ROBERT BENDER

1 object. You're asking for an opinion.

2 MR. ALBERT: Well, it could lead to
3 admissible evidence, and we're in a depo, so --

4 MS. FIORE-LEHMAN: If you can answer
5 it you can answer it.

6 A. I can't -- you want me to give you my
7 opinion?

8 Q. Well, did you make a mistake possibly
9 saying that my client said that Officer Ellis kicked
10 the door in?

11 A. No. What she originally told me may be
12 different than what she wrote. This is her writing,
13 not mine.

14 Q. So you're say she told you that he kicked
15 the door in, but she didn't put it in her statement?

16 A. Yeah. Happens all the time.

17 Q. Let me ask you this: You've been an
18 officer for how long?

19 A. An officer or here in Jamestown?

20 Q. An officer?

21 A. Seventeen years.

22 Q. So you've answered many calls in that
23 time?

SERGEANT ROBERT BENDER

1 A. Yes.

2 Q. And obviously people have different
3 versions of events quite frequently?

4 A. Yes, absolutely.

5 Q. Sometimes people remember things
6 differently?

7 A. Yes. I would assume so.

8 Q. Different perspectives?

9 A. Sure.

10 Q. Different vantage points?

11 A. Sure.

12 Q. People perceive things differently?

13 A. Sure.

14 Q. Just because two people say something
15 differently doesn't mean someone is lying; is that
16 correct?

17 A. I can't look into someone's mind. They
18 could be lying.

19 Q. Sure, or it could be an honest mistake;
20 correct?

21 A. Sure. Anything is possible.

22 Q. Okay. This is what she said to you. What
23 did you say to her when she was in that room making

SERGEANT ROBERT BENDER

1 a statement to you?

2 A. About the statement? I'm not certain what
3 you mean.

4 Q. In general. Describe to the best of your
5 recollection everything that you said to her while
6 she was in the interview room with you.

7 A. I had advised her that I didn't think that
8 she was being completely truthful with me.

9 Q. You had not -- had you spoken to any other
10 individuals about this incident?

11 A. No, no.

12 Q. Okay. So without speaking with anyone
13 else what led you to believe that she was not being
14 completely truthful?

15 A. Based on the type of call it was and how
16 we handle them as an agency, and the officer she was
17 accusing of just randomly barging into her door and
18 breaking a lock to get in, it did not -- it doesn't
19 seem feasible that he would do that on that call.

20 Q. So fair to say that you had some
21 preconceived notions about the truthfulness of what
22 she was telling you?

23 A. Correct.

SERGEANT ROBERT BENDER

1 MS. FIORE-LEHMAN: I'm going to
2 object to that, preconceived notions.

3 A. Not preconceived.

4 Q. What I'm saying, Officer Ellis had been
5 working just a few months at the time; is that
6 accurate?

7 A. I don't know the exact time but he was on
8 the job a very short period of time. I don't know
9 if he was off probation.

10 Q. You believe that the Jamestown Police
11 Department does not handle calls that way?

12 A. No, I know we don't.

13 Q. So fair enough. So based on your
14 knowledge of how Jamestown policemen act in the
15 community, you didn't think she was telling the
16 truth; correct?

17 A. Correct.

18 Q. And you told her that; is that accurate?

19 A. Yes, that's accurate.

20 Q. And then what happened?

21 A. She reiterated that she was telling me the
22 truth and wanted to go on with a formal complaint.

23 Q. Okay. Then what happened?

SERGEANT ROBERT BENDER

1 A. I took her complaint.

2 Q. Then what did you do?

3 A. Got a sworn statement from her.

4 Q. Then what did you do?

5 A. Had her sign it, and I notified my
6 lieutenant.

7 Q. Who was your lieutenant?

8 A. Tim Jackson.

9 Q. Okay. What did you say to Lieutenant Tim
10 Jackson?

11 A. Advised him of who was in speaking with me
12 and what she was alleging had happened, and the
13 location.

14 Q. Then what happened?

15 A. He went to the scene of where this
16 allegedly took place.

17 Q. What did he do next, to the best of your
18 knowledge?

19 A. What he did to the best of my knowledge
20 was secured photographs of the scene, of the door
21 and the lock.

22 Q. Did he speak to anyone, as far as you're
23 aware?

SERGEANT ROBERT BENDER

1 A. He did.

2 Q. Who did he speak to?

3 A. Matthew Freeman.

4 Q. Okay. Anyone else?

5 A. Not that I know of.

6 Q. The subject of this complaint was Officer
7 Ellis; correct?

8 A. Yes.

9 Q. Okay. And did you speak to Officer Ellis
10 that night?

11 A. I did after everything was done.

12 Q. Did Lieutenant Jackson speak to Officer
13 Ellis?

14 A. I'm sure he did.

15 Q. What did you mean after everything was
16 done?

17 A. After taking her statement.

18 Q. Just for the record, that was yes?

19 A. Yes.

20 Q. And what did you say to Officer Ellis?

21 A. I don't remember what I said to him, but
22 I'm sure I asked him the details of what happened,
23 what had happened.

SERGEANT ROBERT BENDER

1 Q. What did he say to you?

2 A. The exact opposite of what she was saying
3 happened.

4 Q. And when you say the exact opposite, what
5 do you mean by that?

6 A. That he went there as a peace officer and
7 that she became very upset, very quickly, and that
8 he never went into her home.

9 Q. Okay. Did you get a statement from
10 Officer Ellis?

11 A. No, I did not.

12 Q. Why did you not do that?

13 A. To be honest with you, Lieutenant Jackson
14 and I didn't think about it, or just didn't think we
15 needed it because we had another third party that
16 was involved there, we had their statement.

17 Q. Meaning Nicholas Desnerck?

18 A. Yes.

19 Q. Are you aware of Nicholas Desnerck's
20 criminal history?

21 A. No.

22 Q. Did you look into his criminal history on
23 that date?

SERGEANT ROBERT BENDER

1 A. No. Just like I didn't look into
2 Ms. Freeman's.

3 Q. So you had no knowledge of Nicholas
4 Desnerck's credibility or lack thereof?

5 A. Correct.

6 Q. Obviously he called a peace officer to
7 accompany him to my client's house; correct?

8 A. Correct.

9 Q. Okay. So is it fair to say that based
10 upon that that there was obviously some ill will
11 between my client and Nicholas Desnerck?

12 A. I can't comment on that. I don't know if
13 there was or wasn't.

14 Q. Fair enough. He said one thing, my client
15 said another?

16 A. Correct. Um-hum.

17 Q. Yes?

18 A. Yes.

19 Q. And Officer Ellis didn't swear to anything
20 in relation to these events; correct?

21 A. I believe he's not been disposed yet, so
22 no.

23 Q. Right. Also he did not provide a

SERGEANT ROBERT BENDER

1 statement that evening or any other evening
2 subsequent to these events; correct?

3 A. Correct.

4 (Deposition Exhibit Number 12 - N. DESNERCK'S
5 STATEMENT

6 marked for Identification.)

7 BY MR. ALBERT:

8 Q. Okay. I'm going to show you Exhibit 12
9 for deposition purposes. If you want to take a look
10 at that document, see if you recognize it?

11 A. Sure. I do.

12 Q. What is that?

13 A. This is a deposition taken from Nicholas
14 Desnerck.

15 Q. When was that taken?

16 A. Same day, September 27th, 2015.

17 Q. Who took that statement?

18 A. I did.

19 Q. Is it dated -- why doesn't it have a date
20 at the bottom next to his signature?

21 A. It doesn't give a spot for a date.

22 Q. Usually when people are giving sworn
23 statements, don't they typically --

SERGEANT ROBERT BENDER

1 A. There is no spot for a date on these
2 forms.

3 Q. Interesting. Now --

4 A. The date is right there.

5 Q. That's the date that he's testifying as to
6 what took place; right?

7 A. Yes.

8 Q. But are you saying you took that from him
9 that night?

10 A. Yes, and the date and time is right here
11 at the top.

12 Q. I see. How did you -- so you took a
13 statement from him at 10:25; is that accurate?

14 A. Yes.

15 Q. And how did you get ahold of him that
16 night?

17 A. He was supposed to come in and give a
18 deposition for Officer Ellis about a different case,
19 that I have no knowledge, but I intercepted him
20 before he did that.

21 Q. Do you know what he was going to speak to
22 Officer Ellis about?

23 A. I don't know.

SERGEANT ROBERT BENDER

1 Q. So he knew Officer Ellis prior to him
2 going with Officer Ellis, prior to going to my
3 client's house?

4 A. Know him or dealt with him on another
5 case? I don't know, I guess.

6 Q. So you don't know if they had some sort of
7 relationship prior to going to my client's house?

8 A. No.

9 Q. But you say they were talking about
10 something completely unrelated to my client; is that
11 right?

12 A. I don't know. It was case. Before he was
13 able to give a deposition to Officer Ellis I got a
14 deposition about this.

15 Q. So is it fair to say that it would appear
16 that that other deposition is something completely
17 unrelated to my client?

18 A. I don't know if it is, honestly I don't.

19 Q. Okay. Fair enough. He can speak to that,
20 obviously.

21 A. Yep.

22 Q. He does state that he had opened the outer
23 door to knock on the inner door, in his statement;

SERGEANT ROBERT BENDER

1 correct?

2 A. Yes.

3 Q. So he had, by his own admission, breeched
4 one door at least; correct?

5 A. Yes.

6 Q. Okay. Where is -- are you aware of the
7 layout of my client's residence?

8 A. Not until this morning when I looked at
9 the pictures, some photographs.

10 Q. So you didn't know by opening the outer
11 door if that did make himself inside the residence?

12 A. Based on the way she described it to me,
13 it sounded like a mud room. That's how she
14 described it to me, but I was not there and I had
15 not seen any pictures or photographs of it until
16 today.

17 Q. And a mud room is a room inside of a
18 house; correct?

19 A. It can be. When we go to a house, if
20 we've never been there before -- and looking at the
21 outside, a lot of times the houses in Jamestown, we
22 don't know if they're a whole house or apartments.
23 It could be a common hallway or a mud room for these

SERGEANT ROBERT BENDER

1 two apartments. So looking at the house from the
2 outside you don't know all the time.

3 Q. So when he's making this statement you had
4 never been in my client's house; correct?

5 A. Correct.

6 Q. And you didn't see the house, photographs
7 of my client's house, until this morning?

8 A. Correct.

9 Q. So when he opened the outer door you don't
10 know whether there was a separate unit and he went
11 in the common area of the house, or it's a single
12 unit dwelling and he did, in fact, go into the house
13 or not gotten to the interior door?

14 A. Correct.

15 Q. So he went into the outer door to knock on
16 the interior door?

17 A. Correct.

18 Q. Okay. So from that standpoint the
19 testimony of my client is that they had gone into
20 the house, and his testimony, they are not
21 inconsistent; is that accurate?

22 A. I'm not following that question, sorry.

23 Q. My client stated that he came into the

SERGEANT ROBERT BENDER

1 house; correct?

2 A. Yes.

3 Q. He stated we knocked on the -- I'm sorry.

4 Opened the outer door to knock on the inner door;

5 correct?

6 A. Correct, yes.

7 Q. So we just established that from that
8 statement in and of itself, we cannot tell whether
9 he entered the residence or not; correct?

10 A. He says he opened the outer door to knock
11 on the inner door that leads into the house.

12 Q. Doesn't it say that?

13 A. I opened the outer door to knock on the
14 inner door.

15 Q. So I mean we don't know where the outer
16 door is in relation to the inner door; right?

17 A. Yeah.

18 Q. So we don't know if that meant that he
19 opened the outer door and walked in the house to
20 knock on an inner door, or whether the two doors
21 were adjacent?

22 A. I'm not following how the inner door would
23 be inside of the house. I guess I'm not tracking

SERGEANT ROBERT BENDER

1 that line of questioning.

2 Q. You say there is a mud room?

3 A. Yes.

4 Q. So there is a mud room, and you walk --
5 then you would walk through the mud room to knock on
6 the inner door; is that correct?

7 A. Yes.

8 Q. We don't know whether that was the case
9 here or not; correct?

10 A. Yeah.

11 Q. He's saying he opened a door, went in and
12 knocked on the inner door?

13 A. Knocked on the outer door to knock on an
14 inner door.

15 Q. And when he's knocking on the inner door
16 he could have been inside of my client's door?

17 A. No. He's saying he knocked on the inner
18 door that leads into the house.

19 Q. Well, if it's a mud room, the inner door
20 could be inside of my client's house?

21 A. I'm still not understanding the question
22 the way you're looking at it.

23 Q. From this statement, especially without

SERGEANT ROBERT BENDER

1 knowing the layout of my client's house, we don't
2 know from this statement where Nicholas Desnerck was
3 when he --

4 A. Correct.

5 Q. He could have been somewhat inside the
6 house knocking on an inner door; correct?

7 MS. FIORE-LEHMAN: Well, maybe he
8 should see the statement.

9 MR. ALBERT: Of course.

10 A. I opened the outer door, knocked on the
11 inner door. Misty Freeman came out before I even --
12 before I entered the residence.

13 Q. Okay. Right. I understand, so we don't
14 know where the inner door was that he was knocking
15 on; correct?

16 A. Are you asking me if I know where that's
17 at?

18 Q. Right.

19 A. I don't.

20 Q. Okay. And fair to say if it's a
21 single-unit dwelling and there is a mud room, that
22 that area would not be a common area?

23 A. Sure, if it's only a one --

SERGEANT ROBERT BENDER

1 Q. Right. And we didn't know at that time
2 whether it was a one unit or two unit?

3 A. I do now, but at that time I didn't.

4 Q. Okay. So --

5 A. I had never been there.

6 Q. Fair to say, assuming that it is a
7 single-unit dwelling and he's in the mud room, that
8 he would be in the residence; is that accurate?

9 MS. FIORE-LEHMAN: If you know.

10 A. What's that?

11 MS. FIORE-LEHMAN: If you know.

12 A. Sure.

13 Q. All right. So you got a statement from
14 Nicholas Desnerck before he made another statement
15 about something else to Officer Ellis; correct?

16 A. Yes, sir.

17 Q. All right. And you also got a statement
18 from Matthew Freeman; is that accurate?

19 A. Yes.

20 Q. How did that come about?

21 A. He literally just walked in the police
22 station and said he was here to file a statement.

23 (Deposition Exhibit Number 13 - MATTHEW FREEMAN'S

SERGEANT ROBERT BENDER

1 STATEMENT

2 marked for Identification.)

3 BY MR. ALBERT:

4 Q. I'm going to show you deposition Exhibit
5 13.

6 A. Okay.

7 Q. Is that the statement that you took from
8 Matthew Freeman?

9 A. Yes, sir.

10 Q. And you took that one after you took the
11 statement from Nicholas Desnerck?

12 A. It appears that way.

13 Q. I can hand it back if you need it. I just
14 wanted to ask you a couple questions.

15 A. Can I see the one from Nicholas Desnerck?
16 I just noticed the time. Actually, it was before
17 Nicholas Desnerck's statement.

18 Q. Okay. I'm sorry. I see that now. Okay.
19 Fair to say that he indicates that he was in the
20 living room when this incident took place; correct?

21 A. Yes.

22 Q. And obviously without knowing the layout
23 of the house you would have no idea whether from the

SERGEANT ROBERT BENDER

1 living room you could see these doors where this
2 action was taking place; correct?

3 A. Correct.

4 Q. He indicates that -- he never indicates
5 that he saw what took place, in the statement;
6 correct?

7 A. It does mention he saw -- I can't remember
8 where it is. If you give me a second to read this
9 through.

10 Q. Sure.

11 A. He does mention being able to see out a
12 window, I believe. My mistake. He doesn't put that
13 in the deposition, that is what he tells me and I
14 write it in my report, that he was able to see out
15 the window. That was my mistake.

16 Q. Fair to say when recounting an incident
17 that mistakes can happen?

18 A. Just did.

19 Q. Doesn't mean that you were intentionally
20 being misleading?

21 A. Correct, I wasn't.

22 Q. And he stated that what he heard was get
23 out. And that was being yelled by his mother;

SERGEANT ROBERT BENDER

1 correct?

2 A. Yes.

3 Q. Get out would generally imply that someone
4 is in?

5 A. Generally speaking, yes.

6 Q. But he never indicates in the sworn
7 statement that he saw what took place between his
8 mother and Officer Ellis and Nicholas Desnerck;
9 right?

10 A. Correct.

11 Q. So there is nothing in this statement
12 which is inconsistent with my client's statement; is
13 that fair to say?

14 A. It says here that they were in the yard
15 while the mother was yelling at them.

16 Q. Started at the doorway?

17 A. Started at the doorway. To me that would
18 not be in the house, like she said.

19 Q. Okay. But well, if we're talking about in
20 the doorway, you could be outside the doorway or
21 inside a doorway; correct?

22 A. Well, that's correct. So from -- I guess
23 from here, obviously it started outside the doorway

SERGEANT ROBERT BENDER

1 and that would imply that they never came in.

2 Q. I mean the statement speaks for itself, so
3 we don't necessarily have to debate it. But what
4 I'm saying, it doesn't specifically say they never
5 came in the house; is that fair to say?

6 A. It does not say that.

7 Q. And the statement itself, we can sit here
8 and gab and debate all day, but there is nothing
9 clear in here saying that they were in the house or
10 out of the house as opposed to what he heard and
11 saw?

12 A. It does not say that.

13 Q. When you were taking Misty's statement you
14 stated that as she was speaking you felt she was
15 being dishonest based on your knowledge of Jamestown
16 Police Department and how they operate inside the
17 community?

18 A. Yes.

19 Q. Did you say anything to her in regards to
20 what would happen if she wasn't telling you the
21 truth?

22 A. Yes. Absolutely. I just told her that if
23 it's found that she signed a sworn statement that

SERGEANT ROBERT BENDER

1 was found to be untrue, that she could can held
2 liable in court and charges would be filed against
3 her.

4 Q. So you did tell her that?

5 A. Yes, I did. Would say most -- I can't sit
6 here and recount every time I've taken a statement,
7 but I would say most.

8 Q. So you've said that to people on numerous
9 occasions?

10 A. Yes.

11 Q. How many times -- how many instances have
12 you charged someone with this crime of signing a
13 sworn statement?

14 A. Me personally?

15 Q. Yes.

16 A. Never other than this.

17 Q. So out of all of the other statements
18 you've taken and all the people that you've warned,
19 hey, if you're not telling the truth I'm going to
20 charge you, you've never made another arrest for
21 that crime; is that accurate? If you know, on all
22 of the other statements that you've taken were all
23 of the people telling the truth?

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1 A. As far as I know. After the statement was
2 given it turned out to be true. I don't follow up
3 on those. It goes to court, court decides whether
4 or not people are telling the truth.

5 Q. Sure.

6 A. In this case I had two statements that
7 contradicted it, and I felt I had enough to file the
8 charges.

9 Q. You took those statements after she filed
10 her statement?

11 A. Correct.

12 Q. What made you decide to investigate the
13 veracity, truthfulness of this statement compared to
14 all of the other ones that you've taken in your
15 career?

16 A. One hundred percent truthful, if they
17 hadn't come in it would have been forward on and
18 they would have been doing -- whoever investigated,
19 that officer complaint would have had to do it on
20 their own. So if she had not come in it wouldn't
21 have happened.

22 Q. Okay. So she just happened to be there?

23 A. Yes.

SERGEANT ROBERT BENDER

1 Q. Okay. But do you see anything in
2 Matthew's statement that directly contradicts his
3 mother's statement, and if so, what?

4 A. I would have to sit down and compare the
5 two. And I can if you like.

6 Q. Sure. Go ahead.

7 A. I don't know if I need to use that one.

8 Q. For review purposes?

9 A. Not at all. So, what I'm seeing is a
10 contradiction. Her statement says they entered her
11 home and his said she went to the door to
12 investigate, and they were yelling at the door, not
13 in the home.

14 Q. You find that to be contradictory?

15 A. I do.

16 Q. So from the statement yelling at the door
17 you could tell that these individuals never entered
18 the residence?

19 A. It -- hers says they came in the home, and
20 his says they were at the door.

21 Q. But upon standing at the door, so you're
22 either past the door or at the threshold?

23 A. Yes.

SERGEANT ROBERT BENDER

1 Q. So we don't know whether, from that
2 statement, could we tell whether they were before
3 the threshold or at the threshold? Can you discern
4 that?

5 A. I can't tell you what he was thinking or
6 what he observed, obviously. All we can do is go
7 off this, what he wrote.

8 Q. Sure. Exactly. But I mean from someone
9 saying hey, they were at the door, can you tell
10 whether that means they crossed the threshold?

11 A. You want me to tell you what I think that
12 means? Is that what you're asking?

13 Q. Sure.

14 A. If I were right at the doorway what I
15 think that means?

16 Q. Did you inquire to him as to what he means
17 by these individuals being at the door?

18 A. On the statement, no. I just let him
19 write the statement. There is a little more detail
20 as far as what was asked of him in the report
21 itself.

22 Q. Okay. So you got those two statements,
23 then what did you do with the statements that you

SERGEANT ROBERT BENDER

1 collected at that point?

2 A. What did I do with them?

3 Q. What did you subsequently do after
4 obtaining those statements?

5 A. A got her's, Matthew's and Nicholas
6 Desnerck's statement, reviewed them with Lieutenant
7 Jackson, and we decided that there was enough
8 contradiction to articulate a charge of making a
9 false written statement.

10 Q. So what did you do upon drawing that
11 conclusion?

12 A. We filed that charge.

13 Q. Okay.

14 (Deposition Exhibit Number 14 - COMPLAINT
15 marked for Identification.)

16 BY MR. ALBERT:

17 Q. Is this the complaint that you swore out
18 against my client?

19 A. Yes.

20 Q. Okay. You've sworn out a lot of
21 complaints during your career; is that accurate?

22 A. Yes.

23 Q. When you do so are you taught to be as

SERGEANT ROBERT BENDER

1 specific as possible as to what it is that they did?

2 A. Yeah, I would say.

3 Q. So in other words, if someone is accused
4 of stealing you don't say he stole; but you say he
5 stole this, such and such property from such and
6 such residence at such and such time; is that
7 accurate?

8 A. Yes.

9 Q. Looking at that complaint you swore out,
10 the fact that my client made a false statement;
11 right?

12 A. Right.

13 Q. But you didn't specify what statements she
14 made that were false; correct?

15 A. On here, no. That's correct.

16 Q. Why did you opt not to specify what
17 statements she made that were false?

18 A. In this, and based on the way that the
19 limited space is that you have to type, I just typed
20 what it was, and then I then attached a supporting
21 deposition to it, the court documents that showed
22 it.

23 Q. Right.

SERGEANT ROBERT BENDER

1 A. And that's the way I wrote it up. Never
2 doing one of these before --

3 Q. Understood.

4 A. -- I thought that was sufficient.

5 Q. Understood. And then that night you
6 didn't go and arrest her; correct?

7 A. No.

8 Q. Why not?

9 A. We sent all of the information to the
10 judge to let him review it and file for a warrant if
11 he felt this was enough.

12 Q. Is that common practice?

13 A. Yes.

14 Q. Okay. For Jamestown PD; correct?

15 A. Yes.

16 Q. What determines whether you're going to
17 apply for a warrant or if you're going to lock
18 someone up yourself?

19 A. The biggest would be a person's safety.
20 If it's, you know, someone comes in and says they
21 were being assaulted, and the person knows where
22 they live and they're a threat to them, obviously we
23 would go make an arrest.

SERGEANT ROBERT BENDER

1 Q. But in an instance such as this one, other
2 than that, if a person's safety is -- wasn't really
3 an issue here?

4 A. Not an issue here. So we would send it up
5 to have it reviewed by the judge, and then he would
6 file for a warrant if he thought that there was
7 enough.

8 Q. Do you know which judge signed off on this
9 to file for a warrant?

10 A. I would have to look at the warrant.

11 Q. I'm sorry.

12 A. That's all right.

13 Q. Do we know after reviewing the warrant
14 which judge signed off on it?

15 A. Looks to be Judge LaMancuso's signature.

16 Q. Okay. And -- can I just take a look at
17 that?

18 A. Sure. You want this?

19 Q. Yes. Do you know when this warrant was
20 executed?

21 A. When they went and picked her up?

22 Q. Yes.

23 A. There is a booking somewhere in the

SERGEANT ROBERT BENDER

1 paperwork that will have the date of when she was
2 picked up.

3 Q. Okay. Thank you. Were you part of --
4 strike that, please. Did you have any involvement
5 in arresting my client?

6 A. That day, yes. The officers that went to
7 pick her up asked for my assistance.

8 Q. Do you know why they did that?

9 A. Based on the area that they were going to.
10 They tried her house and she was not there, and
11 apparently she was at an outdoor event so they
12 wanted more officers there.

13 Q. How did they determine she was at an
14 outdoor event?

15 A. I believe they went to her house first and
16 they were told that.

17 Q. Do you know who told them that?

18 A. I don't.

19 Q. Is there any documentation to show that
20 they had gone to her house first, if they did --

21 A. If they went for a warrant check it would
22 be in a call log somewhere. But if there's no
23 paperwork, it's done on a warrant check.

SERGEANT ROBERT BENDER

1 Q. Do you know who the officers were that
2 originally went to her house?

3 A. That was a long time ago. I go to a lot
4 of calls. I'm pretty sure that I know the
5 transporting officer, but that's about it.

6 Q. Who was that?

7 A. Just because she would have been probably
8 the only female working.

9 Q. Who is that?

10 A. It would have been Officer Russell.

11 Q. So describe the circumstances in which my
12 client was arrested.

13 A. Like they went to her house, did a warrant
14 check and she was not there. And then they were
15 given information on where she was. They called me
16 to assist because they wanted more police officers.
17 Then went to that location, located her and brought
18 her to jail.

19 Q. Where was that location?

20 A. Jefferson Middle School.

21 Q. How many officers were present for this
22 arrest?

23 A. Like I said, I don't remember all of the

SERGEANT ROBERT BENDER

1 officers that were there. I could guess but that
2 would be about it.

3 Q. Yeah, I mean again, you could -- maybe
4 estimate would be a better word.

5 A. Sure, I can estimate for you. My guess
6 would be probably somewhere in the ballpark of three
7 to four.

8 Q. Okay. Do you know why it was decided to
9 pursue that arrest at that time as opposed to
10 waiting until she got home, for instance?

11 A. Sure. Generally what we do -- and it's
12 common that the officers were thinking in this
13 case -- but in general what we would do for a
14 warrant check, we would go to someone's house and we
15 get information where we can go, somewhere in the
16 city. Then we'll go there before they get home
17 because we can't guarantee that we're going to be
18 available when they get home, based on the call
19 volume.

20 Q. Who set bail upon her?

21 A. It would have been on the warrant. Judge
22 issues it.

23 Q. Okay. Do you know how was this presented

SERGEANT ROBERT BENDER

1 to the judge? Was it given to him personally or
2 mailed to him?

3 A. Goes through the channels of City Records
4 Department. We submit this report, would have been
5 completed on the -- Wednesday the 27th into the
6 28th, it looks like, actually --

7 Q. Right. Right.

8 A. So it would be turned into the Records
9 Department in the morning, actually would have
10 been -- because the 27th was a Sunday it would have
11 gone in on Monday to Records. And then Records
12 would send it up to the court, after it's been
13 signed off by the lieutenant and the bureau.

14 Q. So no officer actually presented this
15 before the judge when he was -- he's reviewing this
16 warrant; if you know?

17 A. No.

18 Q. In terms of the bail, is that something
19 that you guys request of the judge to set?

20 A. No.

21 Q. He does that unilaterally then, if you
22 know?

23 A. Yeah. The only time supervisors would set

SERGEANT ROBERT BENDER

1 a bail is if someone was coming in on a new charge
2 where there has not been a warrant.

3 Q. Sure. Now, this was also an internal
4 affairs complaint too; correct?

5 A. No. This is -- there is two different
6 reports.

7 Q. Meaning what?

8 A. There was two different -- well, call
9 these first sheets, incident reports. There were
10 two separate ones done. One is an officer complaint
11 and one is a false statement.

12 Q. Okay. Where is -- so there was an officer
13 complaint that she filled out too; correct?

14 A. Right. And the officer complaint here
15 that I'm looking at.

16 Q. And then there is a second incident report
17 that was completed, so two different incident
18 numbers?

19 A. Well, I see --

20 Q. I'm going to get this one marked. Oh,
21 this was already marked. Look at this officer,
22 complaint, that's separate. What was the other
23 report that you filed?

SERGEANT ROBERT BENDER

1 A. Right there. You have got it right there.

2 Q. Well, this is the officer complaint;
3 correct?

4 A. No. At the top it says -- there is a
5 charge making a false statement.

6 Q. So they look almost identical; right, but
7 they're --

8 A. Both written by me.

9 Q. Right.

10 A. Handwriting is pretty similar.

11 Q. And it is it fair to say that you wrote
12 about this -- okay.

13 MS. FIORE-LEHMAN: This one is not
14 marked yet.

15 A. Correct.

16 (Deposition Exhibit Number 16 - LT. JACKSON'S
17 SUPPLEMENTAL REPORT.)

18 BY MR. ALBERT:

19 Q. So going back to the officer complaint.
20 Is this considered a formal report that she filed
21 against an officer -- or a formal complaint, I mean?

22 A. Yes.

23 Q. Even though this is not something she

SERGEANT ROBERT BENDER

1 wrote out?

2 A. No. She gives the statement and we do the
3 report. We don't have them do the report.

4 Q. Even in the officer complaint you --
5 basically you attached the other supporting
6 deposition from the other people that you
7 interviewed; correct?

8 A. Um-hum.

9 Q. Yes?

10 A. Yes.

11 Q. And talked about the fact that you were
12 requesting a warrant; correct?

13 A. Yes.

14 Q. Who did you give that officer complaint
15 to?

16 A. Would have gone through the channels of
17 the paperwork. Would go into a basket, captain got
18 a copy of it, and then it goes through the channels
19 of going into a file somewhere.

20 Q. Do you know where -- the outcome of this
21 complaint?

22 A. That's above my pay grade. Goes to the
23 captain, and I'm assuming that he found what he did,

SERGEANT ROBERT BENDER

1 based on my supporting deposition that I got,
2 sufficient, and it ended there.

3 Q. Okay. You don't know whether --

4 A. I don't.

5 Q. Would there be some sort of file relating
6 to this officer complaint?

7 A. Yeah. It all goes in the file in the
8 records department, in the police department.

9 Q. And is there a file specific to the
10 officer complaint portion of it?

11 A. Every incident has its own pile.

12 Q. I get that, but in this case the incident
13 number, or the CR number is the same as Misty's
14 arrest; correct?

15 A. No.

16 Q. It's different?

17 A. That's why I had to do two different
18 reports.

19 Q. I got it now. I'm sorry. One number
20 different. I'm sorry. I hope I'm not being slow in
21 just trying to pick up the system.

22 A. If you have not done this before you
23 wouldn't know.

SERGEANT ROBERT BENDER

1 Q. Sure. So in there there is a file with
2 everything related to this officer complaint bearing
3 an index number or an incident number?

4 A. Yeah. Incident number.

5 Q. Okay.

6 MR. ALBERT: I'm going to make a
7 formal request for the internal affairs file
8 relating to the officer complaint.

9 Q. So you filled this out, this is her
10 original complaint as depicted in Exhibit 11. And
11 you gave it off to whom exactly?

12 A. It would have gone into the basket and in
13 to the records, and then the captain would have been
14 notified about it.

15 Q. So did you that, you put it in the basket
16 and you don't know what happened to it?

17 A. Yes.

18 Q. Then you started working on this
19 supplementary report relating to my client's arrest;
20 is that accurate?

21 A. That?

22 Q. Yes.

23 A. That's a supporting deposition.

SERGEANT ROBERT BENDER

1 Q. Right.

2 A. The second police report, it's over there.

3 Q. Oh, I had it all along. Okay. So this is
4 the report that you did relating to my client's
5 arrest; correct?

6 A. Yes.

7 Q. In conjunction with the complaint?

8 A. Yes.

9 Q. Okay. And I'm going to hand this to you
10 in a second, but basically talks about Matthew
11 Freeman coming down to the station to offer a
12 statement; correct?

13 A. Yes.

14 Q. Originally he states that -- the officer
15 and Nicholas forced their way into the house;
16 correct?

17 A. Yes.

18 Q. And then it says that you told him he was
19 not telling the truth; right?

20 A. That's correct. It says -- do you want me
21 to read it to you?

22 Q. You can read it for the record, if you
23 want.

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1 A. Writer advised Matthew he was not telling
2 the truth, and he then stated, Matthew then stated
3 Nicholas Desnerck entered the house.

4 Q. So he changed the story after you told him
5 he's not telling the truth; correct?

6 A. That I believed he was not telling the
7 truth, correct.

8 Q. Did you talk to him about him being
9 arrested if he writes a false statement?

10 A. I don't recall off the top of my head.
11 I'm pretty sure I did because I usually do. He put
12 in the statement that everything is true and
13 accurate.

14 Q. Okay.

15 A. If it's false I realize I could be
16 arrested. So I probably did mention that you make
17 sure you're being truthful.

18 Q. So he could have been concerned that if
19 you didn't hear what you wanted him to say that he
20 could be arrested?

21 A. Only about what happened.

22 Q. But after he originally started telling
23 you what happened, you told him he's not telling the

SERGEANT ROBERT BENDER

1 truth?

2 A. Correct.

3 Q. Obviously without any personal knowledge,
4 you were not there?

5 A. Just based on what he had told the
6 lieutenant, who the lieutenant gave a supplementary
7 report before.

8 Q. So you're saying that he spoke to the
9 lieutenant before he spoke to you?

10 A. Yes. On the scene.

11 Q. So you're saying that evidentially he told
12 the police lieutenant that the door had already been
13 damaged?

14 A. I believe it's in the lieutenant's
15 supplemental. All damage happened a month or two
16 ago.

17 Q. Is this what you're referring to as the
18 lieutenant's supplemental?

19 A. No. That's part of mine.

20 Q. Okay. You put what was in the
21 lieutenant's supplemental in your report?

22 A. But it's attached, the one that the
23 lieutenant signed.

SERGEANT ROBERT BENDER

1 Q. This one?

2 A. Yes, sir.

3 Q. You're saying this was attached to this
4 document?

5 A. Um-hum.

6 Q. Yes?

7 A. Yes.

8 Q. So I've got to find that one. This one.
9 And --

10 MR. ALBERT: Off the record.

11 (Off-the-record discussion.)

12 BY MR. ALBERT:

13 Q. So you're saying that page four of this
14 document is what was -- of Exhibit 16, that's
15 Lieutenant Jackson's supplemental report; correct?

16 A. Yes, sir. Signed by Lieutenant Jackson.

17 Q. Okay. He indicated to Lieutenant Jackson
18 that he was not aware of any more damage that was
19 done; is that accurate? You can obviously take a
20 look at the lieutenant's supplemental.

21 A. Yep. No damage to the door.

22 Q. His superintendent talks about damage or
23 lack thereof as reported by Matthew Freeman;

SERGEANT ROBERT BENDER

1 correct?

2 A. Yes.

3 Q. It states he was not aware of any new
4 damage; is that accurate?

5 A. It does say that.

6 Q. And he doesn't speak to whether or not
7 they came in the house or not; correct?

8 A. Not specifically. Right here it asks him
9 if there was a problem the other night, which
10 generally someone coming in the house -- my mom's
11 friends came over with the police to try to get his
12 dog back.

13 Q. But that doesn't speak to whether or not
14 they came in the house or not; is that correct?

15 A. Yes. No, that doesn't.

16 Q. Okay. After he told you that they did
17 come in, you told him he's not telling the truth;
18 correct?

19 A. Correct.

20 Q. Okay. And then that's when he said
21 something else about what took place; correct?

22 A. Yes. Correct.

23 Q. He was a younger kid at the time?

SERGEANT ROBERT BENDER

1 A. Eighteen.

2 Q. Okay. Was he eighteen then or eighteen
3 now?

4 A. I think he was eighteen then.

5 Q. Okay.

6 A. I only know that because I read the report
7 and I put it in my report that he was eighteen.

8 Q. Okay. So what -- let's go back to the
9 arrest of my client. You stated that she was at a
10 middle school?

11 A. Yes, sir.

12 Q. What was going on? Was there a football
13 game being played?

14 A. Yes, football game.

15 Q. Describe how it was that she was arrested.

16 A. We went in to the field area. It's a
17 pretty enclosed area, like where the high school has
18 their games. We went into the enclosed area, walked
19 up to the press box where we were directed where she
20 was at, advised her that we had a warrant for her
21 arrest, and she was escorted out of the bleachers
22 and into a waiting police car.

23 Q. Did she ask what she was being arrested

SERGEANT ROBERT BENDER

1 for?

2 A. I don't recall, but most people do.

3 Q. Sure. Do you recall what you said to her?

4 A. That she had a warrant for filing a false
5 statement.

6 Q. What else?

7 A. I didn't transport her so there was no
8 more communication.

9 Q. Do you know how many people were present
10 when she was arrested at the ballpark?

11 A. I don't remember the crowd at all.

12 Q. Okay. So there was a football game going
13 on but you don't know how many people were in
14 attendance?

15 A. No.

16 Q. I kind of answered my own question, but
17 the answer is?

18 A. I have no idea.

19 Q. Okay. Sorry.

20 A. That's okay.

21 Q. Do you know whether anyone else was
22 present at the residence when this incident was
23 taking place?

SERGEANT ROBERT BENDER

1 A. Are we going back to the original
2 incident? Sorry.

3 Q. Yes, September 27th, that incident.

4 A. No. She mentioned that -- I believe in
5 her statement she says who was there, and never
6 formally gave me names.

7 Q. Okay.

8 A. She says kids, I think, multiple kids.

9 Q. And they would obviously be witnesses of
10 some sort as to what took place; correct?

11 A. Potentially, yes.

12 Q. Were they spoken to?

13 A. Well, one of them was, Matthew.

14 Q. Aside from Matthew?

15 A. No. Other than that, no.

16 Q. What about neighbors, were any neighbors
17 spoken to to see if they witnessed anything that was
18 going on on September 27th, 2015?

19 A. I believe Lieutenant Jackson would have
20 put that in there if he did.

21 Q. And Officer Ellis was the subject of a
22 complaint at that point; correct?

23 A. Correct.

SERGEANT ROBERT BENDER

1 Q. Okay. So do you know the disposition of
2 that original charge that you had filed against my
3 client?

4 A. Are you talking about -- sorry. Maybe I
5 misheard you. Your client or Officer Ellis?

6 Q. The criminal charges that you filed
7 against her.

8 A. I was thinking you were talking about
9 Ellis, I'm sorry.

10 Q. No, that's okay.

11 A. I don't know the technical wording, but
12 dismissed on something.

13 Q. It was dismissed; right?

14 A. Yes.

15 Q. Is that accurate?

16 A. Yes.

17 Q. Okay. Do you know the grounds for the
18 dismissal or no? If you don't that's fine.

19 A. I don't know the legal terms but basically
20 it said that -- told me the judge didn't like the
21 way something was worded in the charge that I wrote
22 up.

23 Q. Do you know when that charge was

SERGEANT ROBERT BENDER

1 dismissed?

2 A. I don't.

3 Q. Do you need a break at any point? Does
4 anyone need a break?

5 A. I can keep going.

6 Q. Me too. Okay. April 27th, 2016, do you
7 know whether that was the time in which the charges
8 were dismissed against my client?

9 A. I don't know without looking at the
10 paperwork.

11 Q. Yeah, sure.

12 (Deposition Exhibit Number 17 -- DECISION/ORDER
13 marked for Identification.)

14 BY MR. ALBERT:

15 Q. So you don't necessarily have to read the
16 whole thing, but you can if you want to. But just
17 turn to the back page of the document and --

18 A. Very last page?

19 Q. Yeah. And you can read more if you want
20 to. But does that indicate the date?

21 A. Appears to be the 27th day of April 2016.

22 Q. Okay. Did you file -- okay. So you were
23 told it was written wrong essentially; correct?

SERGEANT ROBERT BENDER

1 A. He didn't like the wording in the charge,
2 apparently.

3 Q. Did you file new charges against my client
4 in April of 2016?

5 A. I don't believe it was in April. I don't
6 remember when it was but I did file a secondary
7 charge and sent it up to court to see if that's what
8 he was looking for.

9 MR. ALBERT: Can we mark this?

10 (Deposition Exhibit Number 18 - 2ND CHARGE
11 marked for Identification.)

12 BY MR. ALBERT:

13 Q. I'm going to show you deposition Exhibit
14 18, and if you want to read through that that's
15 fine. Just let us know if that's the amended second
16 complaint that you filed against my client that you
17 charged her with for filing a false instrument?

18 A. Okay.

19 Q. When was that filed?

20 A. That was signed on July 28th, 2016.

21 Q. Why did you not file the charges in April,
22 May, June or earlier in July of that year?

23 A. When it was first given to me in an

SERGEANT ROBERT BENDER

1 envelope -- it was found to be behind the seat of a
2 police car, apparently the document or -- this was
3 in the envelope from --

4 Q. You're talking about the decision; right?

5 A. Yeah. The decision, and -- was it
6 Bridget? Bridget sent me a manila envelope with
7 this.

8 Q. And when you say this, what are you
9 talking about?

10 A. The decision.

11 Q. Judge's decision?

12 A. Yes.

13 Q. Okay.

14 A. Asking me to re-write the charge with
15 better wording. And that was found in a police car
16 behind the driver's seat, I believe, is what the
17 officer told me. And it was found a month later.

18 Q. A month later from what?

19 A. When it was actually given.

20 Q. So that would be?

21 A. Ballpark-ish late May. Yes.

22 Q. Okay. Do you know how it got there?

23 A. It was given to an officer apparently, she

SERGEANT ROBERT BENDER

1 said she gave it to an officer who she saw in
2 Mayville court, and he apparently left it in the
3 police car and forgot to give it to me.

4 Q. Okay.

5 A. Then when I spoke to my lieutenant about
6 it, asked him some questions about what he thought I
7 should do, file new charges or if we should let it
8 go, and he said file new charges. So that's when I
9 filed new charges.

10 Q. Even though that's in May of 2016?

11 A. Yep.

12 Q. So why were charges not filed then after
13 you had spoken to the lieutenant in May of 2016?

14 A. I actually -- I didn't speak to him in
15 May, I spoke to him later. I had vacation time in
16 June, and when I came back -- it wasn't very long,
17 maybe a week, I had forgotten about it. And he
18 reminded me about it and asked me what was going on
19 and I said is it too late. And he said well, file
20 the charges and see what the judge decides.

21 Q. So you didn't check to see by law whether
22 it was too late; is that what you're saying? You
23 didn't check?

SERGEANT ROBERT BENDER

1 A. I sent it up to the judge to see if it's
2 sufficient, and if it's okay to still do.

3 Q. Okay. So you used the judge's -- not
4 idea -- let me rephrase that. You basically
5 requested that the judge advise you as to your
6 police duties?

7 MS. FIORE-LEHMAN: I'm going to
8 object.

9 A. Not police duties.

10 Q. All right. I mean -- do you mind if I see
11 that a second?

12 A. Which one?

13 Q. The complaint.

14 A. Absolutely.

15 Q. Did you become aware at some point --

16 MR. ALBERT: Well, I'll mark this.

17 (Deposition Exhibit Number 19 - NOTICE OF CLAIM

18 marked for Identification.)

19 BY MR. ALBERT

20 Q. Did you become aware at some point that my
21 client filed a Notice of Claim against the Jamestown
22 Police Department?

23 A. Yeah.

SERGEANT ROBERT BENDER

1 Q. When was that?

2 A. I have no idea when it was.

3 Q. Okay. You don't know when it was that you
4 were served with her Notice of Claim?

5 A. No, I don't. It was left in my mailbox.
6 I never got a copy of anything.

7 Q. Do you know when you received that Notice
8 of Claim in relation to when you filed the second
9 complaint against her?

10 A. I don't.

11 Q. Would it surprise you to know that the
12 Notice of Claim was served upon you just a day
13 before the second complaint was filed against her?

14 A. Okay.

15 Q. Is that something that would surprise you
16 or not?

17 A. I literally don't know when I was served
18 the paperwork. It was in my mailbox.

19 Q. Did the fact that you guys were served
20 with a Notice of Claim in late July of 2018 remind
21 you about the charges against her in May?

22 A. No.

23 Q. It was coincidence then?

SERGEANT ROBERT BENDER

1 A. Well, in speaking to my lieutenant and he
2 said hey, what did you do with the paperwork, are
3 you going to file charges, and I said should I still
4 file charges, and he said yes, you should still file
5 charges.

6 Q. When was that that he said that?

7 A. That's the date I wrote it, I believe it
8 says on the bottom where I signed. Oh, it's right
9 here.

10 Q. Okay. So July 28th, 2016?

11 A. Right.

12 Q. So which lieutenant spoke to you in
13 regards to that matter?

14 A. Lieutenant Wozneak was working that day,
15 and he's the one that reminded me of it and asked me
16 what was going on with it.

17 Q. Okay. What was -- then in terms of -- you
18 knew the original complaint had been faulty
19 according to the judge; correct?

20 A. Original complaint?

21 Q. The one that was discussed?

22 A. Yes.

23 Q. What did you do in relation to this

SERGEANT ROBERT BENDER

1 complaint that was different than the first
2 complaint?

3 A. Just worded it like the DA asked me to
4 change.

5 Q. Right here, perfect. Thank you. Okay.

6 A. So it looks like I actually put in a date
7 and time, and the address of the police department,
8 of when she came in, and then actually put in there
9 that did knowingly make a false statement by
10 providing a signed supporting deposition affirmed
11 under penalty of perjury at the Jamestown Police
12 Department. So that wording wasn't in there.

13 Q. Okay. So you filed that. You applied for
14 a warrant again; is that accurate?

15 A. Yes.

16 Q. Same judge, Judge LaMancuso?

17 A. I'm not sure if it was signed off by the
18 same judge or not.

19 Q. Okay. Then do you know how she was
20 arrested in this particular instance?

21 A. Was I there that day? Is that what you're
22 asking?

23 Q. Are you aware?

SERGEANT ROBERT BENDER

1 A. I'm aware now. I wasn't then.

2 Q. And what is it that you're aware of now?

3 A. She turned herself in.

4 Q. Do you know if she was posted anywhere on
5 any web sites showing that she had an active arrest
6 warrant?

7 A. I don't.

8 Q. When someone has an arrest warrant is
9 there some sort of -- is there some sort of public
10 or internet site?

11 A. County-run web side that posts the
12 warrants.

13 Q. Is that anytime that someone has an arrest
14 warrant, does that trigger that their name to be
15 posted by the department-run web site?

16 A. I don't know how it works. It's county.
17 I've never even logged onto it.

18 Q. Understood, thank you. Are you aware of
19 the outcome of this particular complaint that you
20 filed against her?

21 A. It was again dismissed because of the time
22 lapse, time that it was filed again.

23 Q. You're not sure when you filed it, you

SERGEANT ROBERT BENDER

1 didn't know whether it was timely or not; is that
2 accurate?

3 A. Correct.

4 Q. I know you said you were going to let the
5 judge decide, but did you do anything yourself to
6 determine whether or not that complaint was timely?

7 A. No.

8 Q. You didn't do any legal research?

9 A. No. I didn't go up and talk to them or
10 confer with the ADA. I signed it, wrote it up and
11 submitted to the judge to see if it was sufficient.

12 Q. Two different judges in Jamestown;
13 correct?

14 A. Yes.

15 Q. And that particular judge that signed the
16 warrant may not have been aware of the history of
17 this case at all; correct?

18 A. Probably. That could have happened.

19 Q. In other words, nowhere in that complaint
20 did it state that you had already filed a complaint
21 and it had already been dismissed, and the
22 procedural history of this case, that's not anywhere
23 in the complaint?

SERGEANT ROBERT BENDER

1 A. Correct.

2 Q. When you presented the warrant to the
3 judge he may not have been aware of the prior
4 history of the case; correct?

5 A. Could be. I don't know.

6 Q. Okay. Now, have you -- aside from the
7 conversations with your lawyer, which are
8 confidential, have you spoken to your fellow
9 officers about this matter as a whole?

10 A. No.

11 Q. Never talked to Officer Ellis about what
12 was going on here?

13 A. Just asked if he had been deposed, or if
14 he was going to be deposed.

15 Q. What about Lieutenant Jackson?

16 A. Same.

17 Q. So all you asked them is hey, have you
18 guys been deposed yet or are you going to be?

19 A. Right.

20 Q. Have you spoken to anyone, if you would --
21 and I know it's a broad question, but relay the
22 conversations that you have had with your fellow
23 officers about this matter.

SERGEANT ROBERT BENDER

1 A. There is no way of recollecting in four
2 years' worth of conversations, that's just not
3 possible.

4 Q. Fair. Do you recall having conversations
5 about this matter with members of the Jamestown
6 Police Department?

7 A. No.

8 Q. I'm thinking if I'm missing anything. If
9 not, I'm probably going to wrap up. No more
10 questions, thank you.

11 MS. FIORE-LEHMAN: I have no
12 questions.

13 (Where upon the examination was concluded.)

14 *****

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1 STATE OF NEW YORK

2 COUNTY OF CHAUTAUQUA

3

4 I, Kathleen A. Roberts, Notary Public in and
5 for the State of New York, do hereby certify:

6 That the witness named in the deposition, prior
7 to being examined, was first duly sworn;

8 That said deposition was taken by me at the
9 time and place herein set forth and was taken down
10 in shorthand and thereafter transcribed into
11 a typewritten version;

12 That said deposition is a true record of the
13 testimony given by the witness and of all objections
14 made at the time of the examination;

15 I further certify that I am neither counsel
16 for, nor related to any party to said action, nor in
17 any way interested in the outcome thereof;

18 IN WITNESS WHEREOF, have subscribed my name
19 on this 14th day of March, 2019.

20

21

22 Notary Public in and for the

23 State of New York

ADVANTAGE COURT REPORTING
(716) 962.4007

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